

AUG 01 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MARIA DE JESUS CASTILLO ARCE; et
al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74425

Agency Nos. A95-293-669
A95-293-670

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 **

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Maria De Jesus Castillo Arce and Bielman Alexis Hurtado Castillo, natives
and citizens of Mexico, petition pro se for review of the Board of Immigration

* This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") order pretermitted Castillo Arce's application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the agency's decision that an applicant has failed to establish continuous physical presence in the United States, *see Vera-Villegas v. INS*, 330 F.3d 1222, 1230 (9th Cir. 2003), and we deny the petition for review.

Castillo Arce's testimony established that she departed the United States in 1997 for four to five months. Her son Abimael's immunization record does not contradict this testimony, as it does not indicate whether Castillo Arce was in the United States at the time of the immunization. Accordingly, the IJ's determination that Castillo Arce's absence broke the accrual of continuous physical presence is supported by substantial evidence. *See* 8 U.S.C. § 1229b(d)(2) (providing that any absence exceeding 90 days breaks an alien's accrual of continuous physical presence for purposes of cancellation of removal).

Castillo Arce's due process challenge to the BIA's summary affirmance procedure is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.